

**TENNESSEE STATE BOARD OF EQUALIZATION**  
**BEFORE THE ADMINISTRATIVE JUDGE**

IN RE:    **A E Staley Mfg. Co.**                                 )  
          **Property ID: 041 041 037.00**                         )  
                                                                               )  
          **Tax Years 2011, 2012, 2013**                         )    **Loudon County**  
                                                                               )  
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                                                                               )    **Appeal Nos. 69230, 78373, 86872**

**INITIAL DECISION AND ORDER**

**Statement of the Case**

The subject property is presently valued as follows:

<b><u>Tax Year</u></b>	<b><u>Land</u></b>	<b><u>Improvements</u></b>	<b><u>Total Value</u></b>	<b><u>Assessment</u></b>
2011	\$3,812,100	\$56,467,800	\$60,279,900	\$24,111,960
2012	\$3,812,100	\$61,763,900	\$65,576,000	\$26,230,400
2013	\$3,812,100	\$51,179,100	\$54,991,200	\$21,996,480

Appeals have been filed on behalf of the property owner with the State Board of Equalization for each of the tax years. The Division of Property Assessments filed a Petition for Intervention in these appeals and such Petition has been granted.

This matter was reviewed by the administrative judge pursuant to Tennessee Code Annotated §§ 67-5-1412, 67-5-1501 and 67-5-1505. The administrative judge conducted a hearing in this matter on August 12-13, 2013. The record was held open until October 18, 2013 for the filing of Proposed Findings of Fact and Conclusions of Law. The Taxpayer, A.E. Staley Mfg. Co., was represented at the hearing by L. Marshall Albritton of the Nashville law firm of Parker, Lawrence, Cantrell & Smith. The Division of Property Assessments and Loudon County Assessor of Property, Mike Campbell, (hereafter collectively referred to as "Assessor") were both represented at the hearing by Robert T. Lee, General Counsel for the Comptroller of the

Treasury. The parties agreed to consolidate the tax years under appeal with January 1, 2011 constituting the date of valuation for all three years. At the conclusion of the taxpayer's proof, the Assessor moved for a directed verdict. The administrative judge took the Motion under advisement.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The subject property is a corn wet milling plant which processes shelled corn and produces a range of starch products for the food and paper and other industries, high fructose corn syrup, corn sugar (glucose, dextrose, fructose), ethanol, carbon dioxide, animal feed pellet and other products. The subject property is located on approximately 181.53 acres of land in Loudon County, Tennessee with approximately 1 mile of frontage on the Tennessee River and approximately 0.7 miles of road frontage. There are several improvements on the subject property, consisting of 31 buildings, 17 rail spurs and barge docking. The property was developed in approximately 1981-82 by the Taxpayer who is one of the largest processors of corn in the United States. Subject property is located at 198 Blair Bend Drive in the Blair Bend Industrial park in Loudon, Tennessee.

At the hearing, the Taxpayer relied on the testimony and written appraisal report of Marvin A. Maes, MAI, CRE who was stipulated to be an expert in the valuation of industrial property. The Assessor's position was based upon the testimony and written analysis of Mr. Campbell. The Taxpayer asserted that subject property should be appraised at \$30,900,000 in accordance with Mr. Maes' appraisal report. The Assessor maintained that the current appraisals should remain in effect in the event it is determined that the Taxpayer failed to carry the burden of proof. Alternatively, the Assessor contended that subject property should be valued at \$60,365,674 in accordance with Mr. Campbell's analysis.

The parties were in agreement that the subject property constitutes a special purpose property because its unique design, special construction, and layout severely restrict its functional utility to any use but that for which the property was originally built. The parties also stipulated that the highest and best use of the property continues to be as a corn wet milling plant. Given those stipulations, both parties relied on the cost approach to determine the fair market value of the subject property.

The basis of valuation as stated in Tennessee Code Annotated § 67-5-601(a) is that “[t]he value of all property shall be ascertained from the evidence of its sound, intrinsic and immediate value, for purposes of sale between a willing seller and a willing buyer without consideration of speculative values. . .”

Since the Taxpayer is appealing from the determinations of the Loudon County Board of Equalization, the burden of proof is on the Taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Quality Control Board*, 620 S.W.2d 515 (Tenn. App. 1981).

As noted above, the Assessor moved for a directed verdict at the conclusion of the Taxpayer’s proof which the Administrative Judge took under advisement. The Taxpayer opposed the Motion on two grounds. First, the Taxpayer maintained that such a Motion is procedurally incorrect. Mr. Albritton argued that under the Tennessee Rules of Civil Procedure the proper procedural vehicle is a Motion for Involuntary Dismissal pursuant to Rule 41.02 rather than a Motion for Directed Verdict under Rule 50. Second, and more importantly, the Taxpayer argued that the Motion is not well taken substantively.

Rule 1360-04-01.01(3) of the Uniform Rules of Procedure for Hearing Contested Cases

Before State Administrative Agencies provides as follows:

In any situation that arises that is not specifically addressed by these rules, reference may be made to the Tennessee Rules of Civil Procedure for guidance as to the proper procedure to follow, where appropriate and to whatever extent will best serve the interests of justice and the speedy and inexpensive determination of the matter at hand.

Traditionally, the State Board of Equalization has considered a Motion such as that made by the Assessor a Motion for Directed Verdict. Even assuming arguendo that Mr. Albritton is technically correct, the end result does not change insofar as the Assessor is essentially contending that the Taxpayer has not carried the burden of proof.

The Administrative Judge has been conducting hearings for the State Board of Equalization for approximately thirty years. During that time, Mr. Maes has appeared as an expert on numerous occasions. The Administrative Judge has adopted Mr. Maes' reports, in whole or in part, in many of these cases. The Administrative Judge has the utmost respect for Mr. Maes and does not recall ever rejecting one of his appraisal reports out of hand. Respectfully, the Administrative Judge finds that in this case Mr. Maes' appraisal report has so many errors that the cumulative effect is to render it unreliable and lacking in probative value. Indeed, at one point in the hearing Mr. Maes himself commented on the number of errors in the appraisal report. For the reasons detailed below, the Administrative Judge finds that the Taxpayer did not carry the burden of proof and the Assessor's Motion is well taken regardless of whether it is characterized as a Motion for Directed Verdict or Motion for Involuntary Dismissal.

#### Land Valuation

Technically, it is unnecessary to summarize or address Mr. Campbell's testimony. However, for ease of understanding the Administrative Judge will simply note that Mr. Campbell

valued the land at \$3,812,100 (or approximately \$21,000 per acre), relying primary on the January 17, 2008 sale of the adjacent parcel for \$22,000 per acre.

Mr. Maes valued the subject land at \$18,000 per acre based on six sales for a total land value of \$3,250,000. At page 34 of his appraisal report, Mr. Maes summarized the sales in a table as follows:

<u>Sale No.</u>	<u>Price/Acre</u>	<u>Acres</u>	<u>Location</u>
1	\$22,000	33.100	Blair Bend Ind. Park
2	\$20,279	7.890	Blair Bend Ind. Park
<b>Subject</b>	<b>\$17,930</b>	<b>181.236</b>	Blair Bend Ind. Park
5	\$16,000	13.210	Matlock Bend
3	\$15,000	16.770	Sugarlimb Park
6	\$15,000	16.050	Highlands Bus. Park
4	\$13,362	25.220	Matlock Bend
Mean	\$16,940	18.710	N/A

(Emphasis in original)

Respectfully, the Administrative Judge finds that Mr. Maes' own data supports a higher per acre value given certain factors seemingly ignored in his own analysis. Sales #3 and #6 were sold by the City of Loudon and Loudon County to industries recruited for economic development. Given that governmental entities in Loudon County have offered several tracts of land for \$15,000 per acre in an attempt to create economic encouragement for new industry, the Administrative Judge finds that those transactions cannot be considered arm's-length sales indicative of market value. The Administrative Judge finds that sale #1 adjoins the subject property and is the only comparable with frontage on the Tennessee River like the subject. It commanded the highest price per acre. Sale #2 constitutes the only other sale in the same industrial park as the subject

and it commanded the second highest sale price.<sup>1</sup> Sale #4 occurred in 2005 and must be considered so remote in time as to have no probative value. Sale #5 seemingly established the lower limit of value at \$16,000 per acre, but it is in another industrial park that must be considered inferior given subject property's long shoreline and location in the Blair Bend Industrial Park. Given the foregoing factors, Mr. Maes' concluded value of \$18,000 per acre does not appear to reflect the market value of subject land.

### Improvement Valuation

The Administrative Judge finds that the most significant deficiencies in Mr. Maes' report concerned the numerous errors in his appraisal of the improvements utilizing a segregated cost analysis based in part on data from Marshall & Swift Valuation Service ("Marshall"). As will be discussed in detail below, Mr. Maes seemingly chose to ignore Marshall in certain key areas in order to justify a lower value.

As indicated above, both appraisers relied on the cost approach to value. Although it is technically unnecessary to address Mr. Campbell's analysis, the Administrative Judge will briefly do so in certain areas to facilitate the reader's understanding of the proof offered on behalf of the Taxpayer.

Mr. Maes completed a segregated cost analysis using Marshall while Mr. Campbell used the on-line Marshall & Swift Segregated Cost Estimator in preparing his cost approach. Mr. Maes' final value conclusion for the improvements was \$27,617,172, or \$33.21 per square foot. Mr. Campbell, in contrast, concluded that the improvements should be valued at

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<sup>1</sup> Like sale #6, this transaction occurred in 2011, but after the relevant assessment date of January 1, 2011. Normally, such sales are irrelevant. See *Acme Boot Company and Ashland City Industrial Corp.* (AAC, Cheatham County, Tax Year 1989). However, the Assessment Appeals Commission has allowed post-assessment date sales into evidence to confirm what could have reasonably been assumed on the assessment date or to show a trend in values. See, e.g., *George W. Hussey* (Davidson County, Tax Year 1992); and *Christine Hopkins* (Franklin County, Tax Years 1995 & 1996). Presumably, Mr. Maes included the sales in his analysis for one or more of these reasons.

\$56,553,574. The sizable difference in their concluded improvement values can largely be attributed to their estimates of reproduction cost new. Mr. Maes determined the reproduction cost new to be \$44,807,456 while Mr. Campbell's reproduction cost new was \$79,115,327.

The major reason for Mr. Maes' low reproduction cost new is that he classified the Quality of construction at 1.5-Fair. The Four Basic Qualities under Marshall Valuation Service are as follows:

**Low (Q1) - These tend to be very plain buildings that conform to minimum building code requirements. Interiors are plain with little attention given to detail or finish.**

Average (Q2) - These buildings are the most commonly found and meet building code requirements. There is some ornamentation on the exterior with interiors having some trim items. Lighting and Plumbing are adequate to service the occupants of the building.

Good (Q3) - These are generally well designed buildings. Exterior walls usually have a mix of ornamental finishes. Interior walls are nicely finished and there are good quality floor covers. Lighting and plumbing include better quality fixtures.

Excellent (Q4) - Usually, these buildings are specially designed, have high-cost materials and exhibit excellent workmanship.

(Emphasis added)

Mr. Maes testified that he selected the low quality category because, in his opinion, Marshall cost estimates were inflated by its assumption of unionized labor - which is not the norm in Tennessee. But, Mr. Maes did not prepare an independent cost analysis or provide any support for such an approach. In fact, there is nothing in any document from Marshall in the record that would direct an appraiser to use a lower quality category to offset any speculation that the costs are too high. He further testified that he did not attempt to obtain a local multiplier, but was familiar with the fact that the Division of Property Assessments has developed local multipliers

in reappraisal programs in the past. The Administrative Judge finds that use of a local multiplier is certainly appropriate, but intentionally utilizing too low a grade is not.

One of the most significant indications that Mr. Maes' reproduction cost is out of line with the market can be found on page 28 of his report wherein he stated the insurance coverage on the facility in 2011 was \$108,046,892. Mr. Maes agreed this would be the cost to reproduce the facility. However, Mr. Maes testified without any supporting documentation that insurance companies and owners typically used an erroneous reproduction cost and that Marshall was geared toward insurance companies and assessors. The Administrative Judge recognizes that insurance coverage can indeed overstate reproduction cost in certain instances. In this case, however, Mr. Maes' estimate is less than 50% of the insurance coverage. This seemingly suggests that either the insurance coverage is grossly excessive or Mr. Maes has significantly understated the actual reproduction cost.

One of the many errors in Mr. Maes' appraisal report established during cross-examination was that he continuously used the wrong call for the foundation. Mr. Maes misclassified the foundation on several buildings by calling it "Concrete, Non-bearing Wall" when in fact, as he admitted, the foundation consists of bearing walls and the cost attributed to it in his report was erroneous. He attempted to explain later that this mistake would not make a significant change in the valuation and would be less than a 1% increase in cost. However, a review of the difference in "Concrete, Non-bearing Wall" and "Concrete" as provided on Mr. Maes' sheets shows a very significant increase in cost - as would be expected with additional steel and concrete. The cost per unit for "Concrete, Non-bearing Wall" is \$2.81 while the cost per unit for "Concrete" ranges from \$23.23 to \$31.39, which would be almost a 900% increase in the cost.

Other errors in Mr. Maes report include the following:

- Repeatedly uses the entire building area in the site prep calculation; but typically, site prep takes into account the main building level only.
- Building 2, 3, 4A (page 3 of Exhibit 7 Maes' Report) is listed as a 3 story building with an average 94' story height. This is not the average height.
- Building 5 (page 5 of Exhibit 7 Maes' Report). Mr. Maes did not include any grating / mezzanine compared to 6,560 square feet in Mr. Campbell's analysis. Furthermore, Mr. Maes used 100% building area in site prep and foundation, but this is a 5-story building.
- Building 9 (page 9 of Exhibit 7 Maes' Report) is a 3-story building, but Mr. Maes used the entire area in the site prep and foundation. He also classified the foundation as non-bearing wall when it is a load-bearing foundation.
- Building 11 (page 11 of Exhibit 7 Maes' Report) is another 3 story building in which Mr. Maes used the entire area in the site prep and foundation. He shows the average story height of 28.5' when in fact it is 42'. He also classified the foundation as non-bearing wall when it is a load-bearing foundation.
- Building 12 (page 12 of Exhibit 7 Maes' Report). Mr. Maes used the non-bearing foundation wall when it is load-bearing foundation. He also failed to list any grating / mezzanine, compared to 1,350 square feet in Mr. Campbell's analysis.
- Building 13 (page 13 of Exhibit 7 Maes' Report). Mr. Maes used 100% building area in valuing the site prep on this multi-story building. Again Mr. Maes used the non-bearing foundation wall when it is load-bearing foundation, and did not include 7,090 square feet of mezzanine.
- Building 14A (page 14 of Exhibit 7 Maes' Report). Mr. Maes listed the building as a 1 story building when in fact it is a 3-story building. Again Mr. Maes used 100% building area in valuing the site prep on a multi-story building and used the non-bearing foundation wall call when it is load-bearing foundation
- Building 14B (page 15 of Exhibit 7 Maes' Report) is listed as a 1-Story building, but it should be 6 Story building. Mr. Maes included the elevator, but nonetheless called it a 1 story building. Again Mr. Maes used 100% building area in valuing the site prep on a multi-story building

and used the non-bearing foundation wall call when it is load-bearing foundation

- Building 15 (page 16 of Exhibit 7 Maes' Report) is classified as non-bearing foundation, but this is a 3-Story building and therefore the foundation would be load-bearing.
- Buildings 19B, 22, 23, 25, 26, 27, 27B, 28 and 29 are all listed as non-bearing foundation when they are, in fact, load-bearing foundations.
- Building 28 is a 3-story building and Mr. Maes used the entire area in site prep.

The Administrative Judge finds that these missed calls and classifications along with the lower grading resulted in Mr. Maes' estimated reproduction cost new being unrealistically low.

In determining the appropriate physical depreciation to buildings Mr. Maes used his own depreciation developed from his analysis of sold properties in which he had some involvement as an appraiser over the property at some point in time during the last 30 years. He maintained that Marshall does not adequately account for depreciation. Mr. Maes presented a graph of properties for which he had data regarding construction costs and later sales to determine this additional depreciation.

The Administrative Judge finds that Mr. Maes' estimate of depreciation lacks probative value for several reasons. Although Mr. Maes analyzed 41 properties, not a single property was located in East Tennessee<sup>2</sup> Moreover, although it was stipulated that subject property constitutes a special purpose property, the vast majority of properties considered by Mr. Maes were not special purpose properties. Presumably, special purpose properties often depreciate at a different rate than manufacturing facilities suitable for a variety of uses. Finally, the properties considered by Mr. Maes were constructed and/or sold anywhere from 1979 to 2012, and ranged in size from 35,748 SF to almost 1,000,000 SF. The Administrative Judge finds that such a limited sample of

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<sup>2</sup> The properties were all located in Middle and West Tennessee in both urban and rural markets.

diverse properties does not enable one to accurately determine the appropriate depreciation for subject property.

Mr. Maes also deducted \$3,991,142 or 7.59% for functional obsolescence and an additional 2.91% (or \$1,623,010) for external obsolescence for various buildings on the subject property based upon his largely unsubstantiated opinions. For example, Mr. Maes justified his deduction for external obsolescence on page 40 of his report as follows:

The state of the ethanol market was discussed on pages 25-27. **I think it is only a matter of time before the ethanol operations is discontinued at this facility for reasons discussed in the foregoing and in the next section of this report. As a consequence, any remaining value in the Alcohol Building and Alcohol load will become worthless and a casualty of external obsolescence.** The total amounts to \$1,521,898 as the remainder of the reproduction cost less the physical deterioration and functional obsolescence already charged.

Respectfully, Mr. Maes does not qualify as an expert with respect to the ethanol market; and no proof was offered by the Taxpayer to lay a foundation for Mr. Maes' assumptions.

Mr. Maes also misclassified the 600,000 gallon vertical fuel tank adjoining the Oil Pump House and the 250,000 bushel storage bin attached to the tank farm as tangible personal property. In making this determination he relied upon the Tennessee State Board of Equalization, Rule 0600-5-.09(1). However, Mr. Maes included no analysis as to why the tank should be considered tangible personal property, and did not verify that the taxpayer had reported such tank on its tangible personal property reporting schedule. Mr. Campbell included the tank and bin in his analysis and verified that neither the tank nor bin were included in the taxpayer's personal property schedule.

Mr. Maes also did not value the waste treatment plant, claiming that it was exempt from *ad valorem* taxes. Mr. Maes was unaware that such facility is subject to taxation but would be valued at a special valuation under TCA § 67-5-604 if such property is certified as "pollution

control facilities” by the Department of Environment and Conservation. Mr. Maes simply failed to do his due diligence in determining if the facility has been certified as a “pollution control facility” and he just wrongfully assumed it was exempt from *ad valorem* taxation.

In summary, the Administrative Judge finds that the Taxpayer failed to carry the burden of proof because of the deficiencies summarized above concerning Mr. Maes’ appraisal report. Because the Taxpayer failed to carry the burden of proof, the Administrative Judge finds it unnecessary to address Mr. Campbell’s analysis and testimony. However, the Administrative Judge wants to make it unequivocally clear that he is simply affirming the rulings of the Loudon County Board of Equalization based upon the presumptions of correctness attaching to those decisions. The Administrative Judge is in no way finding that Mr. Campbell’s analysis supports the current appraisals of subject property as his appraisal has not been considered due to the Taxpayer’s failure to carry to the burden of proof.

#### ORDER

It is therefore ORDERED that the Assessor’s Motion for Directed Verdict/ Motion for Involuntary Dismissal be granted and that the following values and assessments remain in effect for tax years 2011 through 2013:

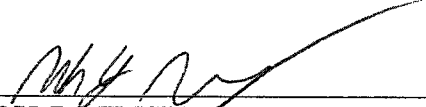
<u>Tax Year</u>	<u>Land</u>	<u>Improvements</u>	<u>Total Value</u>	<u>Assessment</u>
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Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **“must be filed within thirty (30) days from the date the initial decision is sent.”** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **“identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order”**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 25<sup>th</sup> day of October 2013.

  
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**MARK J. MINSKY, Administrative Judge**  
Tennessee Department of State  
Administrative Procedures Division  
William R. Snodgrass, TN Tower  
312 Rosa L. Parks Avenue, 8<sup>th</sup> Floor  
Nashville, Tennessee 37243

**CERTIFICATE OF SERVICE**

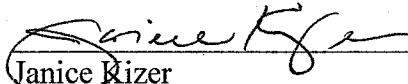
The undersigned hereby certifies that a true and exact copy of the foregoing Order has been mailed or otherwise transmitted to:

L. Marshall Albritton, Esq.  
Parker, Lawrence, Cantrell & Smith  
201 Fourth Avenue North, Suite 1700  
Nashville, Tennessee 37219

Robert T. Lee, Esq.  
Comptroller of the Treasury  
Division of Property Assessments  
505 Deaderick Street, 17<sup>th</sup> Floor  
Nashville, Tennessee 37243

Mike Campbell  
Loudon Co. Assessor of Property  
101 Mulberry Street, Suite 201  
Loudon, Tennessee 37774

This the 25<sup>th</sup> day of October 2013.

  
\_\_\_\_\_  
Janice Rizer  
Tennessee Department of State  
Administrative Procedures Division